

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of	)	
	)	MM Docket No. 99-25
Creation of a Low	)	
Power Radio Service	)	RM-9208
	)	RM-9242

To: The Commission

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**COMMENTS  
OF  
POMONA COLLEGE**

**POMONA COLLEGE** ("Pomona"), by Counsel, pursuant to the *Notice of Proposed Rule Making ("NPRM")*, FCC 99-6 (released February 3, 1999), hereby submits these Comments in the above-captioned rule making proceeding regarding the proposal to create a new low power radio service. In support hereof, Pomona submits the following:

1. Pomona is the licensee of full service noncommercial broadcast station KSPC-FM at Claremont, California.

2. As will be shown herein, Pomona believes there is some merit to the creation of a new low power radio service in some areas of the country. However, Pomona believes that these matters must be carefully addressed, and that the integrity of the broadcast signals of all current full power radio stations should not be compromised. Pomona believes that the NPRM proposes to relax the technical protection standards between stations more than is prudent, but that the Commission can still institute a modest new low power radio service by maintaining significant first and second adjacency protection standards.

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Pomona would like to take this opportunity to provide comments on this, and other, aspects of the NPRM.

3. At the outset, Pomona recognizes that the Commission is trying to afford more broadcast opportunities to those persons and entities that are currently precluded from broadcasting for financial, spectrum scarcity and other reasons. However, the Commission must balance these goals with its historic responsibility of maintaining adequate technical protection to existing service but not precluding additional allotments or assignments by protecting vast areas not actually served. *See, FM Broadcast Stations, 66 RR 2d 338 (1989).*

4. Spectrum Considerations: The Commission's stated decision not to designate a particular FM frequency or frequencies for one or more low power services is prudent. Pomona strongly believes that no current full service broadcast licensee or permittee should be forced off-air or displaced to a new frequency as the result of the institution of any new low power radio service.

5. The Commission's NPRM seeks comment on the kind of status that should be afforded any new low power radio service that is authorized in this rule making proceeding. The Commission proposes to authorize both 1,000 watt stations and 100 watt stations, otherwise referred to as LP1000 and LP100. Pomona believes that LP1000 stations should be afforded primary status and be required to comply with all day-to-day regulations now imposed upon full service broadcasters/<sup>1</sup>, but that LP100 (and any LPFM stations below 100 watts) should only be afforded secondary status with minimal day-to-day

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<sup>1</sup> For example, LP1000 stations should be required to maintain a properly located Main Studio, maintain a Public File, file FCC ownership reports and compile Quarterly Issues-Programs Lists -- to name just a few.

regulatory requirements. The Commission should not lose sight of its goals with respect to low power radio service -- to afford currently deprived persons and entities the opportunity to provide *localized* radio service. If small LP100 and microradio stations are overly burdened with government regulations, it will be difficult (if not impossible) for these stations to survive. The Commission must be careful not to create so much new competition amongst these new LPFM stations that many of them will not be able to survive. Also, the Commission must take steps to ensure that these new stations are real broadcast stations, and not so informal as to be considered Citizen Band Radio style stations.

6. LPFM should be primarily a noncommercial service: Paragraph number 24 of the NPRM questions whether LPFM should be restricted to noncommercial applicants, be open to commercial service, or both. Pomona believes that, if the Commission truly wants to create new broadcast opportunities for persons or entities now deprived from providing broadcast service, it must avoid the chilling effect that the commercial service, auction selection process would invariably create. As the result of the commencement of the auction selection process for new full service broadcast opportunities, small businesses and minorities are likely to be shut out of most such opportunities. While the Commission has not yet finalized its auction rules for full service commercial broadcast opportunities, it is a reasonable assumption that deep-pocketed parties will out bid smaller businesses and minorities on most opportunities. Money should not dictate who is going to provide LPFM service. The Commission should not repeat the regulatory mistakes that now

pervade full service broadcasting, with several deep-pocketed companies owning and operating hundreds of broadcast stations, thereby resulting in the Commission and the Department of Justice instituting more and more inquiries with respect to market dominance and unfair competition.

7. The only fair way for small groups and minorities to be afforded an opportunity to commence LPFM service would be for the service to be noncommercial. By keeping LPFM noncommercial there would be no auction fees to chill applicants, or regular regulatory fees to burden the financial well-being of these small-time broadcasters. And, there would be more emphasis on community-oriented programming rather than commercial enterprise programming.

8. Equipment certification: In paragraph number 35 of the NPRM, the Commission questions whether there should be an FCC transmitter certification requirement for LPFM and microradio service. The answer must be "yes." Pomona believes that all low power radio service providers must be subject to strict type-accepted equipment requirements and concomitant FCC-inspection requirements to maintain the integrity of the broadcast business. The mere fact that the Commission is proposing some relaxation of the technical protection standards in this proceeding further warrants the need of type-accepted equipment to minimize as much as possible the threat of technical interference to current broadcasters.<sup>2</sup>

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<sup>2</sup> With respect to LPFM, the Commission must maintain the regulatory authority to shut these new stations down if their operations are non-compliant and/or cause electrical interference with other full power and low power broadcasters. If the Commission is not ready to "police" this new broadcast service, then it should not be implemented.

9. Interference Protection Criteria: In paragraphs numbered 38-50 of the NPRM, the Commission offers several ideas regarding interference protection criteria that could be implemented for LPFM. In developing interference criteria for any LPFM service which may be created as the result of this proceeding, it is imperative that appropriate steps be taken to adopt interference criteria which fully protect existing primary status stations, while also preserving the ability of such stations who have not already done so to improve their facilities to the maximum permitted for their class and insuring efficient spectrum utilization. In order to accomplish this goal, it will be necessary to adopt protection requirements which prohibit any class of LPFM station which would have primary status from either receiving or causing any interference, based on the assumption that the LPFM station and all other stations requiring protection consideration operate with the maximum facilities permitted for their class. Any class of LPFM station which has secondary status, however, should be permitted to receive interference but be prohibited from causing interference, either predicted or actual, to the actual operating facilities of any other station requiring protection consideration, similar to the scheme presently employed for other secondary services, such as FM and TV translators and LPTV.

10. Spacing Criteria is Preferred: The spacing criteria proposed in the NPRM for interference protection appears to be the best approach to meet the criteria outlined above, particularly for any class of LPFM station which would have primary status. In addition to its simplicity, it offers the benefit of preserving the rights of both the LPFM station and other stations requiring

protection consideration to operate with the maximum facilities permitted for their class if they are not already doing so. This approach has also historically been successful in minimizing or preventing inter-station interference in the FM band. Given the desire stated in the NPRM to simplify the authorization of LPFM facilities while still preventing interference to other stations, contour protection and the use of directional antennas should not be permitted under any circumstances in any LPFM service which is authorized as the result of this proceeding. This is particularly critical for any class of LPFM stations which might be given primary status. To do so would unnecessarily increase the risk of interference and also increase both the cost and complexity of implementing LPFM service, due to both the cost and complexity of conducting contour protection studies and the cost and complexity of properly implementing directional operation in the FM band. Improperly implemented FM directional antennas installed by unqualified personnel in an effort to cut costs would significantly increase the risk of interference to other facilities requiring protection consideration.

11. Second and Third Adjacent Channel and IF Protection: While the Commission proposes to eliminate second and third adjacent channel protection requirements, Pomona believes that at least second adjacent channel protection standards should be maintained for any power level employed by LPFM stations. Given the higher potential for interference associated with the proposed LP1000 class, Pomona believes that it is also necessary to maintain third adjacent channel protection requirements for any LPFM station operating with a power exceeding 100 watts. At a bare minimum, if further studies

determine that third adjacent channel interference caused by LPFM stations is of no concern, spacing requirements must be adopted to prevent any class of LPFM station which has primary status from receiving interference from higher powered stations operating on third adjacent channels, which is a very real possibility in a situation where a 1000 watt or lower LPFM facility would be located in close proximity to a third adjacent channel station operating with powers 50 to 100 times greater than that employed by the LPFM station. Similarly, since intermediate frequency interference is much more destructive, potentially impacting every FM station in an area (regardless of the frequency on which they operate), it is imperative that IF protection standards be established for any LPFM station which operates with a power exceeding 100 watts.

12. Preclusion Issues: The adoption of any LPFM service which includes stations having primary status must include provisions, similar to those presently employed in FM rule making proceedings, to permit involuntary frequency changes by LPFM stations in order to accommodate upgrades and other modifications by other stations when it can be shown that the public interest would be served by the proposed package of modifications. Failure to do so would run counter to the public interest by unnecessarily having a potential preclusive impact on such upgrades and could also have the undesirable effect of promoting abusive practices, such as encouraging the filing by another party of an LPFM application whose sole purpose is to attempt to block a potential upgrade by a competitor. To insure sufficient flexibility in site selection, full power FM stations should also be permitted to employ the

provisions of Section 73.215 of the FCC Rules (the contour protection rules), including the use of directional antennas, to meet the protection requirements to primary status LPFM stations, due to the additional FAA and zoning obstacles which are normally encountered in siting the taller towers which are required for full power FM stations.

13. Cross-ownership regulations: In paragraph numbered 58 of the NPRM, The Commission asks whether newspapers, cable systems or other mass media should be permitted to own LPFM stations. Pomona believes that the Commission should enforce its cross-ownership rules consistently with those that apply to full service broadcast stations. Inasmuch as those regulations are currently under review, the scope of these regulations should include equal treatment for LPFM stations.

14. Although the Commission questions whether there is a need for a national ownership cap on LPFM stations, Pomona believes such a cap is necessary so that the LPFM service is not overwhelmed by the same companies that went into a buying frenzy after implementation of the 1996 Telecommunications Act -- an act that simply accentuated the need for LPFM service since full service broadcasting is quickly becoming an exclusive club that small businesses and minorities cannot afford to join. The Commission should not make the same mistake again. And, Pomona believes there is merit to a national ownership cap on LPFM stations, whereby one person or entity could not own more than a certain number of LPFM stations.<sup>3</sup> A mileage distance-buffer rule combined with a national ownership cap would be a

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<sup>3</sup> Pomona also believes that a person or entity should not be permitted to own more than one LPFM station within a certain geographically defined area.



reasonable compromise so that this new low power service is implemented in accord with the fundamental principles of due process.

15. With respect to alien ownership, Pomona believes that all LPFM stations should be subject to the statutory restrictions on alien ownership that are enumerated in Section 310(b) of the Communications Act. Likewise, the character qualifications requirements currently imposed on all full power broadcasters should apply to LPFM broadcasters, as well./<sup>4</sup>

16. Service characteristics: In paragraph number 68 of the NPRM, the Commission questions whether there should be a minimum local origination requirement imposed upon LPFM broadcasters. Pomona does not believe that the Commission should intrude upon the editorial judgment of LPFM broadcasters. Rather, the Commission should impose the same basic programming requirements that full power broadcasters face -- namely, LPFM broadcasters should be required to prepare Quarterly Issues-Programs Lists, which would serve as their "track record" at time of license renewal. If the Commission were to impose a quantitative programming requirement upon LPFM broadcasters, then the Commission would be required to allocate the requisite staff to oversee this new service. Such a scenario seems contrary to the simplistic, hands-off goal this new service is supposed to embody.

17. Miscellaneous regulations: While LP1000 stations should be required to participate in the EAS system, LP100 and microradio stations should

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<sup>4</sup> Pomona applauds the Commission in taking the position that any "pirate" radio operators that does not immediately cease and desist its illegal operations will be disqualified from applying for, owning and operating LPFM broadcast stations.

not be so required. Pomona believes that all LPFM stations should be required to broadcast regular station identifications.

18. The Application Process: Although the Commission's NPRM generally suggests that the application process for LPFM be simple and expedient, Pomona cautions the Commission not to rush this process along in such a manner as to invite sloppy and incomplete applications. If the Commission truly wants to bring this new radio service into market as quickly as possible, it would be prudent to adopt a "hard look" processing standard -- applications must be substantially complete and accurate or risk automatic dismissal with prejudice.

19. Pomona is not opposed to a filing window system that permits only a few days for the filing of applications so long as the filing window itself is announced at least 45 to 60 days ahead of the opening of the window. Most applicants need at least 45 days to secure a transmitter site and prepare the requisite engineering statement. If the Commission were to announce surprise filing windows with little opportunity for an applicant to prepare its application, then the Commission will be faced with many applications that specify impermissible sites, or theoretically permissible sites but nonetheless not available to that applicant. It would seem that the last thing the Commission wants to do here is rush the application filing process, only to see hundreds of post-grant modification applications to "clean-up" rushed applications. If the Commission has learned anything from its past, the requirement of substantially complete applications works to everyone's benefit.

20. Finally, the Commission seeks comments on how to resolve

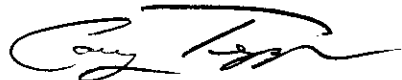
mutually exclusive applications. If the Commission agrees with Pomona and implements a noncommercial-only LPFM service, then a lottery or arbitration selection process should be adopted. If a lottery process is adopted, Pomona believes that preferences should be awarded for applicants that are minorities, and for maximization of spectrum using an areas and population comparison of proposed service.

WHEREFORE, the foregoing premises considered, Pomona would welcome the institution of LPFM broadcast service in the manner set forth in these Comments.

Respectfully submitted,

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